

GARNISHMENT BY DEFERRED DEPOSIT

LENDERS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Ron Allen

LONG TITLE

General Description:

This bill amends the Financial Institutions Act to address automatic garnishment by deferred deposit lenders.

Highlighted Provisions:

This bill:

- clarifies language regarding disclosure over the Internet;
- prohibits including an automatic garnishment clause in a contract for deferred deposit lending;
- requires the Department of Financial Institutions to make a filing with the Federal Trade Commission if necessary to implement this bill; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

7-23-105, as last amended by Chapter 69, Laws of Utah 2003

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL



Be it enacted by the Legislature of the state of Utah:

Section 1. Section **7-23-105** is amended to read:

7-23-105. Operational requirements for deferred deposit loans.

(1) If a check casher extends a deferred deposit loan, the check casher shall:

(a) post in a conspicuous location on its premises that can be viewed by a person seeking a deferred deposit loan:

(i) a complete schedule of any interest or fees charged for a deferred deposit loan that states the interest and fees using dollar amounts;

(ii) a number the person can call to make a complaint to the department regarding the deferred deposit loan; and

(iii) a list of states where the check casher is registered or authorized to offer deferred deposit loans through the Internet or other electronic means;

(b) enter into a written contract for the deferred deposit loan;

(c) conspicuously disclose in the written contract that, under Subsection (4)(b), the deferred deposit loan may not be rolled over beyond 12 weeks after the day on which the deferred deposit loan is executed;

(d) provide the person seeking the deferred deposit loan a copy of the deferred deposit contract;

(e) orally review with the person seeking the deferred deposit loan the terms of the deferred deposit loan including:

(i) the amount of any interest rate or fee;

(ii) the date on which the full amount of the deferred deposit loan is due; and

(iii) the fact that the deferred deposit loan may not be rolled over beyond 12 weeks after the day on which the deferred deposit loan is executed; and

(f) comply with:

(i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq.;

(ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691; and

(iii) Title 70C, Utah Consumer Credit Code.

(2) If a check casher extends a deferred deposit loan through the Internet or other electronic means, the check casher shall provide the information described in Subsection (1)(a)

to the person receiving the deferred deposit loan in a conspicuous manner prior to the [completion] execution of the deferred deposit loan.

(3) A check casher that engages in a deferred deposit loan shall permit a person receiving a deferred deposit loan to:

(a) make partial payments in increments of at least \$5 on the principal owed on the deferred deposit loan at any time prior to maturity without incurring additional charges above the charges provided in the written contract; and

(b) rescind the deferred deposit loan without incurring any charges by returning the deferred deposit loan amount to the check casher on or before 5 p.m. the next business day following the loan transaction.

(4) A check casher that engages in a deferred deposit loan may not:

(a) collect additional interest on a deferred deposit loan with an outstanding principal balance 12 weeks after the day on which the deferred deposit loan is executed;

(b) rollover a deferred deposit loan if the rollover requires a person to pay the amount owed by the person under a deferred deposit loan in whole or in part more than 12 weeks from the day on which the deferred deposit loan is first executed; [or]

(c) threaten to use or use the criminal process in any state to collect on the deferred deposit loan[-]; or

(d) include in the written contract required by Subsection (1)(b) any assignment of or order for payment of wages or other compensation for labor or services that is due the person receiving the deferred deposit loan.

(5) Notwithstanding Subsections (4)(a) and (4)(c), a check casher that is the holder of a check, draft, order, or other instrument that has been dishonored may use the remedies and notice procedures provided in [Title 7,] Chapter 15, Dishonored Instruments.

Section 2. **Required filing.**

(1) The Department of Financial Institutions shall determine whether in order to implement this bill it is necessary for the state to file an application with the Federal Trade Commission under 16 C.F.R. 444.5.

(2) If in order to implement this bill an application must be filed with the Federal Trade Commission under 16 C.F.R. 444.5, the Department of Financial Institutions shall file the application on behalf of the state.

Legislative Review Note

as of 1-6-05 9:43 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0038

Garnishment by Deferred Deposit Lenders*14-Jan-05**2:42 PM*

State Impact

No fiscal impact.

Individual and Business ImpactNo fiscal impact.

Office of the Legislative Fiscal Analyst